



CABS FOR HIRE?

FIXING THE REVOLVING DOOR
BETWEEN GOVERNMENT AND
BUSINESS

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DISCLAIMER

The policy recommendations reflect Transparency International UK's opinion on the best way to reform the revolving door system, in the light of the findings of this report. They should not be taken to represent the views of those quoted or interviewed unless specifically stated.

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GLOSSARY

ACOBA	Advisory Committee on Business Appointments
CAAT	Campaign Against the Arms Trade
GCHQ	Government Communications Headquarters
MoD	Ministry of Defence
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PASC	Public Administration Select Committee
PUS	Permanent Under-Secretary
SCS	Senior Civil Servant
TI-UK	Transparency International UK

EXECUTIVE SUMMARY

In March 2010, Channel 4's *Dispatches* documentary showed secret recordings of several MPs and former Ministers offering their influence and contacts to journalists posing as representatives of a potential corporate employer, interested in hiring them for lobbying work. One former cabinet Minister, Stephen Byers, said "I'm a bit like a sort of cab for hire"¹ and offered to arrange personal meetings with former Prime Minister Tony Blair. Byers also offered examples of how he had used his influence and contacts in the past. The attitudes of the MPs and former Ministers featured in the documentary strongly suggested that the current system of controls and oversight of the so-called revolving door is insufficient.

Transparency International UK's conclusion, based on the research in this report, is that the current system of regulating the revolving door is not working and needs fixing. Recent changes are welcome, but they do not go far enough and are unlikely to restore public confidence. Urgent and comprehensive reforms are needed to reduce the risk of conflicts of interest and make the revolving door work to the benefit of government, the private sector and UK society more broadly. We present fifteen recommendations for how the system can be improved.

The term 'revolving door' refers to the movement of individuals between positions of public office and jobs in the private sector, in either direction². Such movements have become much more common because Ministers and crown servants often leave public office at a younger age than used to be the case. Those in public service have also become more eager to learn from corporate experience. Moving through the revolving door can be beneficial to both sides, improving understanding and communication between public officials and business.

However, the revolving door also undermines trust in government, because of the potential for conflicts of interest. This is evident from a recent survey of public perceptions of the most corrupt sections of British public life carried out for Transparency International UK in 2010. Political parties ranked as the most corrupt sector, with Parliament and the legislature ranking third most corrupt after sport. The same survey also revealed that the revolving door comes a close second in the public's ranking of potentially corrupt activities³. A peerage for a businessman who has been a large political party donor was ranked first.

1. The episode of *Dispatches* was called 'Politicians for Hire' and was broadcast on 22 March 2010. See <http://www.channel4.com/programmes/dispatches/episode-guide/series-57/episode-1> for more details, or <http://www.channel4.com/news/articles/politics/mps-for-sale-what-will-byers-influence/3587067> for a Channel Four news report on the main findings.

2. In this Report, the term 'public office' is used as a generic term to refer to all positions in the executive branch of government, including Ministers, civil servants and other 'crown servants' such as those employed in the police force or armed forces. This generic term is used when discussing the revolving door in general terms. However, when discussing rules applying in the UK, it is necessary to make reference to particular groups within this broad definition, since different sets of rules apply to individuals occupying different roles, eg, Ministers and crown servants. This Report also briefly considers the revolving door as it pertains to the legislative branch, specifically to Members of Parliament.

The conflicts of interest associated with revolving door movements can occur before, after, or during a role in government. For example:

- Public officials might allow the agenda of their previous private-sector employer to influence their government work;
- Public officials might abuse their power while in office to favour a certain company, with a view to ingratiating themselves and gaining future employment;
- Former public officials who accept jobs in business might influence their former government colleagues to make decisions in a way that favours their new employer; and
- Former public officials may use confidential information to benefit their new employers – for example during procurement procedures.

In the UK most public officials recognise the potential for conflicts and try hard to avoid them. However, a number of prominent cases have recently come to light in which Ministers and civil servants have taken lucrative consultancies or directorships with companies that have relationships with their old departments. The recently cancelled privatisation of the search-and-rescue helicopter service is linked to allegations of misuse of commercially sensitive information by former Ministry of Defence staff during the bidding process⁴. The hiring by BAE Systems of a former British envoy to Saudi Arabia has revived questions over the closeness of the defence giant and the UK government⁵.

The current system of regulation is not working and needs fixing. Although Ministers and senior crown servants are required to seek advice from the Advisory Committee on Business Appointments (ACOPA) before taking a job in the private sector, ACOPA is insufficiently resourced to assess specific risks in individual cases or to monitor compliance.

Recent changes – such as the initiatives to ban former Ministers and senior civil servants⁶ from engaging in lobbying for two years after leaving office – are welcome.

But they do not go far enough and are unlikely to restore public confidence. At times, appointments may have the *appearance of impropriety*, even if it often remains unclear whether an actual distortion of public policy has taken place. And that in itself damages trust in government. The ongoing review of the rules governing lobbying by Parliament's Committee on Standards and Privileges – which focuses on what can be done to prevent MPs exploiting their contacts and experience – will be helpful. In December 2010, Sir George Young, the leader of the Commons, said he would examine the revolving door, but only between the Ministry of Defence and defence companies. And Labour MP Denis MacShane called for a 10-year quarantine before Ministers, civil servants or uniformed officers could join a defence-related company⁷. Clearly, urgent and comprehensive reforms are needed to reduce the risk of conflicts of interest and make the revolving door work to the benefit of government, the private sector and UK society more broadly.

3. A public official taking a job with a company that s/he was previously responsible for regulating was rated as potentially corrupt by 80% of respondents, a close second to the 86% who rated a peerage for a political party donor businessman *Corruption in the UK Part One TI-UK December 2010*. Available at www.transparency.org.uk/publications

4. *Financial Times*, 7 February 2011 <http://www.ft.com/cms/s/0/9ff80082-32fd-11e0-9a61-00144feabdc0.html#axzz1EanMljf1>

5. *The Guardian* 18 February 2011 <http://www.guardian.co.uk/business/2011/feb/18/envoy-saudi-bae-systems/>

6. Applicable to civil servants at level SC53 and above.

7. *The Guardian*, 17 December 2010 <http://www.guardian.co.uk/politics/2010/dec/17/defence-Minister-mod-overspend-ann-taylor>

SUMMARY OF RECOMMENDATIONS

- A *full public consultation on regulation of the revolving door* should be conducted in 2011/12 because it is of great public concern;
- *ACOBA should be replaced with a new statutory body* with sufficient resources and powers to regulate the post-public employment of former Ministers and crown servants. The rulings of this new body should be mandatory;
- The *composition of the new body should be more representative of UK society* – for example, by including representatives of civil society;
- The new body should begin its work by carrying out a *thorough audit of all positions* under its remit, to assess potential risk areas. New rules could then be drafted to reflect the severity of risk associated with particular roles;
- It should be *mandatory for the new regulatory body to consult departments* for advice on the risks associated with particular appointments;
- *The period during which former Ministers and crown servants must undergo scrutiny* for appointments in the private sector should be extended from two years to three. The implications of this change for recruiting individuals to government should be fully assessed;
- *The remit of regulation should be extended to include appointments to non-commercial entities*;
- The new body should *disclose full information about the procedures for assessing applications and the reasons for its judgements*; and
- The Independent Parliamentary Standards Authority should *draw up post-public employment rules for MPs*.

ONE INTRODUCTION

"There is great excitement over politicians and outside interests but the real issue is the gilded path from Whitehall where billions of pounds of public spending decisions are made into employment with companies that gained from such contracts and contacts. We need new rules so that anyone in public service cannot go straight into employment with companies to which they previously awarded contracts".

DENIS MACSHANE MP⁸

The term 'revolving door' refers to the movement of individuals between positions of public office and jobs in the private sector, in either direction. This has become an important topic in the UK because relations between the government and the private sector have changed in recent years and become much more intertwined. For example, the government uses the private sector to fund some public projects (through Private Finance Initiatives), hires external consultants to advise it on policy and internal management and, in many ways, has come to regard the private sector as a role model for productivity and modern management practices.

These changes have affected the way government works. They have also had implications for the careers of individual public officials⁹. The government has actively encouraged civil servants to seek experience in the private sector, sometimes on secondments but also by recruiting and promoting those individuals who have gained corporate experience. As one senior civil servant commented:

"The line from the top is, if you want to get on [in the civil service], get out!"¹⁰

In the past individuals would choose between public service and private sector careers. Today, many senior civil servants are likely to spend part of their careers in business.

8. *The Guardian* 26 December 2010.

9. This report uses the term 'public official' to refer to all holders of public office, ie, individuals whose duties are of a public nature and whose salaries are paid out of public funds. In the context of the regulation of individual countries, however, the terminology preferred in that country is used. In the United Kingdom, for example, 'crown servants' are employees whose offices or employments are carried out under the Crown, whose duties of employment are of a public nature, and whose salaries are paid out of the public funds of the UK or Northern Ireland. Civil servants are one type of crown servant, as are members of HM Armed Forces and diplomats.

10. Interview with senior civil servant. The research for this project included interviews with senior serving and former civil servants with experience of the Revolving door, as well as with experts on the regulation of post-public employment and the recruitment of former civil servants and politicians. These individuals have asked to remain anonymous.

Data on the extent of movement through the revolving door is patchy. However, one measure is the number of applications to the Advisory Committee on Business Appointments (ACOBA). This is the independent body set up to assess the appropriateness of such career moves for crown servants and Ministers. Between 2006 and 2009, ACOBA considered 218 applications from senior crown servants about proposed jobs in business. This means that more than half of those who left the senior civil service in that period filed applications with ACOBA to take up business appointments.

Many Ministers also see a high-profile role in business as a natural career move when they leave government. Ministers are often younger than they used to be and may still have a long career ahead of them when they leave office. Forty-two former Ministers sought advice from ACOBA between 2006 and 2009, concerning a total of 109 appointments¹¹.

Being an MP can also be a springboard to a high-status job in the private sector. A total of 149 MPs decided not to contest the May 2010 general election, and many more lost their seats. In some cases, they returned to careers they pursued previously. Others built on their experience as an MP to seek new opportunities. MPs are elected rather than employed, and are expected to serve their constituency as well as the broader public. Nevertheless, their code of conduct is very clear on the need to put the public interest first, and to eschew any role that could be construed as advocacy on behalf of vested interests¹².

Yet, MPs are not required to seek the advice of ACOBA, and face no comparable scrutiny of or restrictions on their post-parliamentary employment. Some argue that this is justifiable, since MPs' power is much more diffuse than that of Ministers and civil servants, with the potential for them to ingratiate themselves or exert undue influence therefore weaker. A less sanguine explanation is that, although the lack of regulation is an anomaly, no government would be prepared to face the backbench revolt that would greet an effort to regulate the future employment of MPs.

The revolving door undoubtedly brings mutual advantages for government and business. Each gains a better understanding of how the other works, as well as being able to draw upon a wider pool of talent. Communication between the two sectors is enhanced, and both sides stand to reap gains in efficiency and the capacity to achieve their objectives.

However, the risks that it poses to the integrity of public officials have not been fully assessed. The prospect of a future career in the private sector might motivate an individual to behave differently while in public office. There is a risk that any public official would seek to use his or her power while in office to ingratiate himself or herself with a possible future employer. Alternatively, once employed in the private sector, a former public official might use information or contacts gained in office to the benefit of the new employer, providing the company with an unfair advantage over competitors.

As the Public Administration Select Committee (PASC) noted in its 2008-09 report on lobbying:

"Particularly controversial is the practice of hiring people with personal contacts at the heart of Government. This can be portrayed as an attempt to buy access and influence."¹³

11. This calculation is based on the Civil Service Statistics produced annually by the Office of National Statistics. While categories and dates do not correspond exactly, the statistics show that the average number of leavers from the Senior Civil Service over the period 2007-08 was 380. The relevant tables can be downloaded here: <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=2899>

12. See Section V of The Code of Conduct for Members of Parliament, 2009, House of Commons HC 735.

13. PASC, Lobbying: Access and influence in Whitehall, First Report of Session 2008-09, Volume I, paragraph 40, p. 13.

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In March 2010, Channel 4's Dispatches documentary showed secret recordings of several MPs and former Ministers offering their influence and contacts to journalists posing as representatives of a potential corporate employer, interested in hiring them for lobbying work. One former cabinet Minister, Stephen Byers, said "I'm a bit like a sort of cab for hire", and offered to arrange personal meetings with former Prime Minister Tony Blair. Byers also offered examples of how he had used his influence and contacts in the past. He claimed to have delayed and amended food labelling proposals for Tesco after phoning Lord Mandelson, then Secretary of State for Business. He also claimed to have saved money for National Express through his contacts with the then Secretary of State for Transport, Lord Adonis¹⁴. The attitudes of these individuals strongly suggested that the current system of controls and oversight is insufficient.

Such controversies arise in many countries, but the UK is arguably facing an especially tough crisis of confidence in government. Self-regulation is apparently failing to uphold high standards, and much could be learned from other countries' greater willingness to enshrine revolving door rules in legislation, and make them fully enforceable. This is in any case a global trend. President Barack Obama tightened US rules in this area immediately upon coming to office, and the OECD is putting pressure on its members to conform with best practice.

The UK can learn from the experience and practices of other countries. It is increasingly common for countries to enshrine rules about the revolving door in legislation, recognising that self-regulation has failed to uphold sufficiently high standards.

Yet regulation also needs to be sensitive to variation in risk, since some roles are at greater risk than others. It would be a mistake to over-regulate roles that are not at great risk. But at the moment there is a greater danger that the roles most at risk are under-regulated. For instance, public employees handling procurement are especially prone to pressures from companies that regard them as offering important access to government contracts.

And some sectors are especially vulnerable to abuse. Defence, energy, transport and healthcare companies are frequent employment destinations for former Ministers, civil servants, and MPs. These are all areas where government is a key buyer, and therefore where it's easy for conflicts of interest to arise. It may be necessary to impose tough restrictions on individuals in such roles, in order to uphold the public interest.

This report aims to grasp the extent of the revolving door phenomenon, to highlight the risks and assess the benefits, and to recommend ways in which the revolving door can be regulated in a way that achieves a healthy balance between the two.

14. The episode of Dispatches was called 'Politicians for Hire' and was broadcast on 22 March 2010. See <http://www.channel4.com/programmes/dispatches/episode-guide/series-57/episode-1> for more details, or <http://www.channel4.com/news/articles/politics/mps+for+sale+what+will+byers+influence/3587067> for a Channel Four news report on the main findings.

TWO UNDERSTANDING THE RISKS AND BENEFITS

2.1 THE RISKS

This chapter seeks to identify the specific risks that the revolving door presents to public officials and Ministers. These risks relate to different types of conflict of interest – a concept defined by Transparency International as a:

"situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests."¹⁵

Moving through the revolving door risks conflict of interest

For the *public official* who has been through the revolving door, or aspires to go through it, that connection with the private sector presents a potential conflict with his or her duty to serve the public interest. In short, the risk is that this conflict could impair the judgement of public officials and hence damage the public interest they are employed to serve.

The civil service has a strong culture of eschewing such conflicts of interest and a generally good record of self-regulation. However, this culture is challenged by the changing relationship between business and government. The boundaries are not as clear as they once were.

Ministers, for their part, have typically taken a different route to executive power, and may not have been embedded in the civil service ethic. They may face strong incentives to exploit their former status when they leave office, and companies are increasingly keen to employ them. Access to government is one of the key selling points of former Ministers.

Moreover, some Ministers are now recruited directly from the business world rather than from the pool of MPs. Former Prime Minister Gordon Brown made ten such appointments to his 'Government of All Talents'. This was a radical departure for Westminster and introduced a number of potential conflicts of interest¹⁶. For example, Lord Digby Jones, Minister of State for Trade in 2007-08, told potential investors in UK industry,

15. *The Anti-Corruption Plain Language Guide*, Transparency International, July 2009, available at: <http://www.transparency.org.uk/>

16. This report focuses primarily on movement from government into business. An excellent report which considers movement in the other direction is *Goats and Tsars: Ministerial and other appointments from outside Parliament*, Eighth Report of Session 2009-10, House of Commons Public Administration Select Committee.

"We don't care what colour you are, we don't care if we can't pronounce your names and we don't care where your money comes from. We just want you to invest in our country."¹⁷

This approach appeared to reflect his private sector background promoting investment into the UK, rather more than that of the government, which had committed itself to taking a more discerning approach to investors by introducing new anti-money laundering regulation in 2007.

Revolving door risks are multi-dimensional

Actions which represent conflicts of interest can occur while an official is in public employment – involving previous employment or plans for future employment – or once the former official is employed in the private sector. They might benefit the individual employee, or the private sector employer, or both. They can cause harm in different ways – for example, by causing officials to subordinate the public interest to private interests, by granting unfair advantages to some parties over others, or by undermining trust in government. And they can be more or less intentional – an individual may not *intend* to exert influence over former colleagues, but their prior relationship may in practice mean that the former official does not receive impartial treatment.

FIVE DISTINCT TYPES OF CONFLICT MIGHT ARISE:

1. **ABUSE OF OFFICE** – A senior official might use his or her power while in office to shape a policy or decision in favour of a certain company, with a view to ingratiating himself or herself with that company and thus opening up a path to future employment. This type of conflict-of-interest offence is abuse of office – occurring while the official is still in public employment. It is an offence regardless of what happens once the individual has left public employment. The private benefit accrues to the official, who gains employment, and also to the company, which secures some kind of privilege as a result of the official's altered behaviour. Indeed, such an act could potentially be interpreted as constituting bribery under the 2010 Bribery Act. It could be argued that a senior official provided an advantage to a company in order to induce it to act improperly by recruiting him or her rather than a better qualified candidate (in breach of a relevant expectation) at a future date (Section 1 of the Bribery Act). Alternatively, the official could be liable for receiving a bribe (ie the job) under section 2 of the Bribery Act¹⁸.
2. **UNDUE INFLUENCE** – A former official now employed by a company might influence his or her former associates to make a decision in a way that favours the company. In this case, he or she (and the company) are exercising undue influence. The former official is no longer employed by the government and it is the judgement of his or her colleagues that is impaired. Indeed, the former official might not even intend to exercise any undue influence. Rather, it might be that former colleagues simply wish to please the former official or, more benignly still, that they simply *trust* him or her. A similar problem occurs relating to pre-public employment, where individuals recruited into public office from the private sector promote the interests of their former employer in their new role. Again, this does not necessarily involve intent to exercise undue influence, but might simply occur because the individual is deeply steeped in the culture and norms of the previous employer. Undue influence over the *formation* of policy or legislation in such a way as to benefit a certain company or interest group is known as *state capture*. This can occur as a result of the revolving door, if former public officials are recruited by companies to engage in lobbying on their behalf. Indeed, lobbying is a very specific part of the revolving door problem, discussed in more detail below.

17. The comment was part of a speech to Middle Eastern entrepreneurs, reported in the Daily Mail, 22 March 2008. See <http://www.dailymail.co.uk/news/article-542390/I-m-half-bulimic---I-eat-lot-don-t-throw-Minister-tells-baffled-guests.html>

18. The Bribery Act 2010 comes into force on 1 July 2011.

3. **PROFITEERING** – An individual might profit from public office by drawing on knowledge or stature derived from his or her public role in order to profit financially. This profiteering could occur while an official is still in public office or after they have left it. However, since some kinds of private gain from office are legitimate – receiving a salary, for example – the question of defining what constitutes a legitimate profit is a matter of debate. It is also commonplace for high-profile former officials, particularly diplomats and Ministers, to write their memoirs upon leaving office, perhaps generating considerable financial profit in doing so¹⁹. At the other extreme, profiteering could take the form of insider trading, ie, “acquisition or disposal by an insider with ‘inside information’ [of securities whose price would be affected by the public disclosure of this ‘inside information’] on a regulated market”²⁰. This is prohibited by law. Moreover, public officials who disclose insider information also risk breaching the Official Secrets Act.
4. **SWITCHING SIDES** – An individual might leave public office to take up employment with a private-sector organisation in a role that requires him or her to oppose the government’s position on an issue where he or she had previously represented the government. This is known as switching sides. It can be regarded as problematic because the individual may have had access to privileged information in government, which could now be used to frustrate the government’s aim.
5. **REGULATORY CAPTURE** – Government officials may become overly sympathetic to sectors and industries they have a responsibility to regulate. This is known as regulatory capture and might occur, for example, if the personnel of an agency charged with regulating industry X tend to be recruited from industry X. It is a problem related to pre-public employment in the private sector. There are often good arguments for recruiting individuals from the private sector to perform regulatory or policy-making roles in a particular area, for example where specialist expertise is necessary for regulation to be adequately carried out. However, it can mean that regulators – perhaps unwittingly – are inclined to be sympathetic to the industry at the expense of the public interest. Some commentators argue that regulatory capture is particularly common in the financial sector, and may have played a role in the 2008 financial crisis²¹.

Table 1 highlights one of the key difficulties of regulating the revolving door. Many of the conflicts of interest which make the phenomenon a concern are most likely to occur once an individual leaves office. That means that regulation must anticipate these risks while officials are still in public employment.

It is also important to note that damage to the public interest can occur even if no actual distortion of public policy takes place, but simply if the *appearance of impropriety* exists. This can gravely undermine trust in government and make it more difficult for the government to perform its role. For this reason, it is of paramount importance not just that those wielding executive power are above reproach but also that they appear to be. Only in this way can they inspire the confidence necessary for the system to function well.

19. This is not to suggest that the publication of memoirs is uncontroversial. Indeed, in the UK, the Public Administration Select Committee (PASC) has held two inquiries into this issue in 2006 and 2007-08. Moreover, former Ministers appear increasingly quick to publish their memoirs, arguably increasing the potential to benefit from their former office.

20. Criminal Justice Act 1993, section 51(1).

21. A comprehensive report on this issue is *Revolving doors, Accountability and Transparency: Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis*, an OECD report of the Expert Group on Conflict of Interest, 5 May 2009, written by David Miller and William Dinan. They also argue that the re-emergence of interventionist states as a result of the financial crisis makes it particularly important to review how public servants and those appointed to guard the public interest in nationalised financial institutions are recruited, tasked and empowered to fulfil their duties.

Some public roles are riskier than others

The risks depend to an extent on which job the official held in government, and the nature of the job taken up after leaving public office. Those who work in public procurement are particularly at risk, since companies are likely to view them as providing important access to government contracts. However, this risk could be taken into consideration when scrutinising individual cases.

Table 1: Summary of conflicts of interest arising from revolving door

Description	Problem/offence	During or post public employment?	Primary beneficiary(ies)
Abuse of power to ingratiate oneself with potential future employer.	Abuse of office Bribery offence	During	Employee, Company
Influencing former associates to implement or shape policy to benefit new employer.	Undue influence or state capture	Post	Company
Profiting financially from stature or knowledge gained while in public office.	Profiteering	During or Post	Employee, Company
Representing a policy position in direct opposition to government's position, when having previously represented the government on the same issue.	Switching sides and using privileged information	Post	Company
Using one's powers while in public office to favour a company or industry to which one is sympathetic.	Regulatory or state capture	During (but perhaps related to pre-public employment)	Company

Some sectors are more prone to abuse

The data on UK crown servants and Ministers applying for advice on business appointments also reveal certain sectoral patterns. Defence, energy, transport and healthcare arise as frequent destinations for former Ministers, civil servants, and MPs. This is notable because these are all areas where government is a key buyer, or indeed, the only buyer. This propensity may be entirely innocent. Senior public officials who gain expertise in these areas will naturally use that expertise when they make their moves into the private sector. However, for the companies that recruit them, the knowledge and access to government they gain from hiring such personnel represent an insider's insight into the thinking and policies of their key client.

NGOs that scrutinise these sectors are sensitive to this issue. In 2005, for instance, the Campaign Against the Arms Trade (CAAT) reported that between 1997 and 2004, an annual average of 39 per cent of all applications to ACOBA were made by individuals working in the Ministry of Defence²². This figure is difficult to interpret. It might reflect the Ministry of Defence being particularly aware of the potential risks to integrity, and thus a zealous approach to requiring its personnel to seek ACOBA's advice. However, some case studies – elaborated below – raise concrete concerns that defence companies have human resources and recruitment strategies which appear to be aimed at gaining privileged access to government and influence over policy.

DEFENCE

Conservative MP Douglas Carswell has drawn attention to the career of Sir Kevin Tebbit, who joined the board of Italian aerospace and defence manufacturer Finmeccanica after many years of service in the Ministry of Defence (MoD). Tebbit had been Permanent Under-Secretary (PUS) at the MoD from July 1998 until November 2005 and was previously director of Government Communications Headquarters (GCHQ). In particular, Carswell cried foul over a government contract to buy 62 Lynx Wildcat helicopters from AgustaWestland, a daughter company of Finmeccanica. The MoD announced its intention to buy 62 Lynx Wildcats from AgustaWestland in March 2005, when Sir Kevin was Permanent Under-secretary. Another contract to supply cockpit voice and flight-data recorders went to Smith Industries. No other firms were invited to bid. Sir Kevin left the MoD in November 2005, and the final contract agreeing the £1.9 billion deal was signed off in May 2006. One month later, Sir Kevin joined the Smith Board and in May 2007 he became chairman of Finmeccanica. He reportedly receives in excess of £100,000 a year from Finmeccanica and £52,000 a year from Smith²³.

The terms of the contract have also been questioned, because the first of the helicopters is not due to be delivered until 2012, despite the reported shortage of helicopters available to UK troops in Afghanistan. One of Finmeccanica's rival manufacturers, US firm Sikorsky, has made repeated offers since May 2007 – all rejected – to provide 60 Black Hawk craft. Sikorsky claims that it could have delivered all of the machines by the end of 2009²⁴.

Sir Kevin Tebbit's appointment to the board of Finmeccanica was considered by ACOBA, and the Committee did not advise against taking up the appointment. Without knowing how ACOBA conducted its enquiries, it is difficult to assess this judgement. However, arguably the appointment failed to meet the 'appearance' standard.

Healthcare is another sector where government is a key buyer, and where some recent appointments have been controversial.

22. *The Campaign Against the Arms Trade (CAAT) Report, "Who Calls the Shots?"*, <http://www.caat.org.uk/resources/publications/government/who-calls-the-shots-4pp-0205.pdf>

23. <http://www.dailymail.co.uk/news/article-1205923/British-troops-Afghanistan-pay-blood-price-new-helicopter-delay.html>

24. <http://www.dailymail.co.uk/news/article-1265017/Troops-pay-blood-price-ex-MoD-chief-protects-1bn-helicopter-contract.html#ixzz0snlFHZx7>

HEALTHCARE

Former Health Minister Alan Milburn has been criticised for taking several jobs with private health companies since leaving office, as well as working for private equity firm Bridgepoint Capital, which obtained several NHS contracts. Again, allegations of impropriety arise partly because of the details of particular contracts. The NHS concluded a contract with Bridgepoint Capital's daughter company, Alliance Medical, six months after Milburn joined the parent company. Under the contract, Alliance Medical agreed to supply 130,000 MRI scans, of which fewer than half were eventually used. The government was nevertheless compelled to pay the full £16m contract price²⁵. Milburn's case is also interesting because he undertook extensive paid work in the private sector while he was an MP, following his tenure as a Minister²⁶.

Patricia Hewitt MP, who had been Secretary of State for Health from May 2005 until June 2007 (and previously Secretary of State for Trade and Industry), accepted a consultancy worth £45,000 with retail and pharmacy company Alliance Boots just seven months after standing down as a Minister, in January 2008. She also took a £55,000 job with Cinven, an investment company which in 2007 bought 25 private hospitals from Bupa²⁷.

Another former health Minister, Norman Warner, became non-executive chairman of UK Health Gateway²⁸ less than two years after resigning as a Minister. UK Health Gateway "help[s] pharmaceutical, equipment & device manufacturers to enter the UK market successfully"²⁹. He also became adviser to technology firm Xansa and anti-microbial company Byotrol, both of which sell services and products to the NHS³⁰.

The Milburn, Hewitt and Warner cases represent just a few examples of former Ministers who have taken lucrative business appointments after retiring to the backbenches or leaving parliament. Indeed, a report by the Sunday Times in January 2008 found that 28 former Labour Ministers had taken jobs in the private sector in the preceding two years³¹. The extent of this practice arguably contributes to public perceptions about unethical behaviour in public life.

Former Ministers who remain MPs are extra vulnerable

MPs who have previously been Ministers arguably warrant special attention. Such individuals are subject to the normal rules applicable to former Ministers and must seek ACOBA advice on their future business appointments. In their role as MPs, they are also constrained by a code of conduct which prohibits them from engaging in lobbying. However, these rules are arguably inadequate to mitigate the particular risks of conflict of interest that arise for this group. These risks differ from those facing ordinary MPs or former Ministers who do *not* remain in parliament after leaving government.

Special Advisers to Ministers have also sometimes been criticised for the jobs they have taken after leaving their posts. Special Advisers are in an unusual position in the British political system in that they perform a job which is partly political and partly akin to a civil service role. Establishing what constitutes a conflict

25. *The Guardian*, *NHS Failed to exploit paid for scanners*, 18 August 2005, <http://www.guardian.co.uk/society/2005/aug/18/health.uknews>.

26. *The Guardian*, *Alan Milburn to quit parliament as report on outside earnings looms*, 27 June 2009, <http://www.guardian.co.uk/politics/2009/jun/27/mps-expenses>

27. *The Times*, *Ex-Ministers cash in on days of power*, 24 February 2008, <http://www.timesonline.co.uk/tol/news/politics/article3423486.ece>;

The Guardian, *BUPA sells hospitals to private equity firm*, 18 June 2007, <http://www.guardian.co.uk/business/2007/jun/18/privateequity1>

28. *The Times*, *Ex-Ministers cash in on days of power*, *ibid*.

29. *The Times*, *Ex-Ministers cash in on days of power*, *ibid*.

30. *The Times*, *Ex-Ministers cash in on days of power*, *ibid*.

31. *The Times*, *Ex-Ministers cash in on days of power*, *ibid*;
The Guardian, *BUPA sells hospitals to private equity firm*, 18 June 2007, *ibid*

of interest can therefore be problematic in this context. While in post, they have considerable access, power and influence. Moreover, they are in the service of the Minister, and arguably pursue the Minister's objectives, to the exclusion of other considerations. At the same time, their jobs are inherently uncertain, since they are tied to the Minister for whom they work, and their employment ends when that Minister's tenure of office terminates, for whatever reason. Special Advisers therefore have both the capacity and an incentive to engage in abuse of office with a view to gaining future private sector employment. Until recently, the risks of misconduct were amplified because Special Advisers were not covered by the rules for crown servants. However, rules for their conduct have now been outlined in a special code of conduct for Special Advisers³². The code includes provisions on leaving employment and requires them to obtain prior approval before accepting an outside appointment in circumstances set out in the rules. Decisions are taken by the departmental Permanent Secretary, on advice from ACOBA. Special Advisers are also subject to the two-year ban on lobbying, although ACOBA may reduce this restriction in certain circumstances.

Jobs involving lobbying are extra vulnerable

In addition to concerns that former civil servants, Ministers and MPs might help companies to win public contracts, there are risks that such individuals might take on lobbying roles in the private sector. That is, companies might employ those with access to government and parliament in order to change policy or laws, rather than to secure one-off deals.

A NUCLEAR LOBBY?

Some politicians and NGOs argue that the nuclear energy industry is successful at using the revolving door to effect changes in government policy. According to Norman Baker, Liberal Democrat environment spokesman until March 2006:

*"The nuclear industry knows that the case for nuclear energy is weak economically, so has embarked on a policy to get sympathetic MPs on board. The nuclear industry is spending thousands to buy influence."*³³

Indeed, the government did reverse its policy on nuclear power, shifting from its intention in 2003 "[not to build] a new generation of power stations"³⁴ to the view that ruling out nuclear power would be a "profound mistake"³⁵.

John Sauven of Greenpeace has given evidence to the PASC on the nuclear industry's record on recruiting former MPs and Ministers to lobbying roles. Sovereign Strategy, for example, is an energy lobbying company offering its clients help with obtaining "pathways to decision makers in national governments"³⁶. The company has a history of pro-nuclear work and has supported Fluor, a US engineering company, in its bid to purchase British Nuclear Group. The company appears to be deeply embedded in political-government networks:

- It is run by Alan Donnelly, former Labour MEP.
- Lord Moonie, former MP for Kirkcaldy and close contact of Gordon Brown, became an associate director of the company weeks after leaving parliament.
- Lord Cunningham, former Labour MP for the Copeland constituency in Cumbria, also works at the company.
- Alan Milburn has been paid by Sovereign Strategy to make a speech.

Sovereign Strategy is not a member of the Association of Professional Political Consultants, a professional body regulating lobbyists, which has a code of conduct stating that its members should not employ or pay politicians.

32. The Code can be downloaded at: <http://download.cabinetoffice.gov.uk/special-advisers/code-of-conduct.pdf>

33. *The Telegraph*, 'Questions over nuclear power and influence', 27 May 2006.

34. HC Deb 24 February 2003, col. 32, House of Commons Public Administration Select Committee First Report of Session 2008-09, op. cit., at 42, p.13, para. 41.

35. BBC Today Programme, Rt Hon Alistair Darling MP, 23 May 2007.

36. <http://www.sovereignstrategy.com/services/>, accessed 24 September 2010.

Lobbying is difficult to regulate. On the one hand, it is an important part of the democratic process that allows interest groups to have a voice and presents an opportunity for those with the best arguments to influence policy. Governments can gain valuable insights from lobbyists that help them to engage in more informed decision-making. On the other hand, this democratic ideal can provide a cover for some groups to gain an unfair degree of access and influence.

Even for those who aim to construct internal Chinese walls to avoid conflicts of interest, social norms are likely to challenge those boundaries:

"Tapping into a closed network of friends and colleagues built while in office, a government employee-turned lobbyist may well have access to power brokers not available to others. In some cases, these networks could involve prior obligations and favours"³⁷.

In short, once an individual is embedded in a social network close to power, it can be difficult to ensure that relations remain on a formal footing.

However, lobbying is also an issue which reaches beyond the revolving door. Arguably, it is better addressed with explicit rules on lobbying than through regulation of the revolving door.

2.2 BENEFITS

The most often-heard argument in support of the revolving door is that it improves *mutual understanding* between business and government, making it easier for both to achieve their objectives efficiently. The new relationship between government and business is often seen as particularly beneficial for the civil service, as one senior civil servant interviewed for this project commented:

"The civil service used to be airless, insular, ignorant of the way the world worked. Not just the commercial world, but also the third sector, and overseas."³⁸

Movement from the private sector into government can thus be an important method for transferring knowledge and skills.

Government benefits from business insights

Some skills are more readily developed in industry roles than in government, but are nonetheless beneficial to government. One senior civil servant who had spent a period of his career in industry recalls:

37. *A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – and What to Do About It*, Revolving Doors Working Group, 2005.

38. Interview for this project.

“Coming back into government, the advantages are very clear. The new administration has to cut budgets at an unprecedented level. Nobody in the relevant government departments has experience of doing proper cuts. I did it at [my old company].”³⁹

Indeed, a civil servant with experience of industry and understanding of government might be better placed to advise on cuts than a management consultancy firm hired for the task.

Business benefits from people who know how government works

Companies clearly see a role for individuals with experience and contacts in government, and hire people who are willing to facilitate access, as a former civil servant admits:

“At [company X] my job was to persuade government to do the things [company X] wanted it to do. I knew the right person to phone and understood how the organisation works, its dynamics, motivation... and I had a way in. I was more effective than my peers [at other similar companies] because of that. But I didn't get favourable treatment. Civil servants don't favour old colleagues.”⁴⁰

This individual felt confident that he had not received privileged access. Yet his description of his role highlights the difficulty of drawing a line between acceptable and unacceptable use of contacts and knowledge.

Why government needs outside expertise

Where the revolving door brings business people into government, it is thought to be beneficial in recruiting much-needed *expertise*. The need to bring in expertise from the private sector might have grown in recent years. The nature of government has arguably become more specialist, particularly in some areas, such as information technology or communications. This presents a challenge to a civil service that used to pride itself on training generalists who could adapt to different challenges in any part of government. As the First Civil Service Commissioner Janet Paraskeva told the Public Administration Select Committee in 2009:

“Over the past 10 years or so, I think it has been clear that the Civil Service needed skills that it had not necessarily grown of its own, trained accountants, IT specialists, HR specialists and so on.”⁴¹

Some interviewees for this report also felt that the public was less prepared to accept Whitehall's expertise as authoritative. This puts Whitehall under pressure to bring in specialist knowledge, and industry is often the best source of expertise in some areas.

39. Interview with former senior civil servant for this project.

40. Interview for this project.

41. *Outsiders and Insiders: External Appointments to the Senior Civil Service, Seventh Report of Session 2009-10, Public Administration Select Committee, 21 January 2010.*

How civil servants gain industry experience – and the risks

These arguments about mutual understanding and expertise have been key drivers of civil service policy on career development. For example, senior civil servants are encouraged to go on secondments to industry, where they spend a period of several months or a year in a company before returning to their former post. This can be important for career progression in the civil service and, as a senior civil servant pointed out, can be a cheap way of accessing new skills:

"we lack the skills that you get in the private sector. But hiring private sector people on high salaries is not the only way to get those skills."⁴²

One senior commentator interviewed for this project suspected that secondment represented a path for civil servants to try out and find jobs in the private sector. In this context, secondment might be more sensitive in some areas than others. To second a civil servant with responsibility for defence procurement to a defence contractor might pose unacceptable risks to integrity, particularly given that defence procurement deals span very long periods. To second a press officer to a similar role in industry would be less controversial.

Why Ministers with specialist experience are needed

In the case of Ministers, the need for specialist expertise may have become more acute because of the growing number of 'career politicians'. That is, since more MPs have purely political experience – as parliamentary researchers, party activists, Special Advisers, or think-tank researchers – when they are elected, the pool of relevant sectoral expertise from which Ministers can be drawn is more limited. The chances of finding a health Minister with experience of running healthcare services or an education Minister who has previously taught in schools are increasingly slim, and become more so as a government spends time in office (and exhausts the supply of potential Ministers with relevant experience). The problem of recruiting business experience is particularly acute for the Labour Party. Only 7 per cent of Labour MPs in the 2010 parliament have experience of working in business, compared to 29 per cent of Conservatives and 31 per cent of Liberal Democrats⁴³.

How Ministers with specialist experience are appointed – and the risks

Former Prime Minister Gordon Brown's 'Government of All Talents', into which he recruited Ministers with experience of industry and public services, who were not MPs, was aimed at bringing such expertise into government. Most of these Ministers were tasked with particular mandates to reform an institution or policy, with mixed success.

However, this practice creates problems when those Ministers return to their previous careers. As former Ministers, it may become problematic for them to hold certain positions or interests which they would previously have held without question. It is critical that they give adequate consideration to these constraints on their post- public employment careers when they accept Ministerial appointments. On the other hand, a system which prevented individuals from returning to the private sector after a period in public office would be counterproductive, since it would make it difficult to attract people from the private sector into government roles.

Why the revolving door should not be too tightly controlled

Another set of arguments suggests that, whatever the risks, it is not desirable to regulate the revolving door too tightly. These arguments centre around the desire to grant freedom of employment to civil servants and to reduce the risk of sudden redundancy for Ministers.

42. Interview for this project.

43. Hackett, Paul and Paul Hunter, *Who Governs Britain? A Profile of MPs in the New Parliament*, The Smith Institute, 2010.

More flexible careers

It is arguably unreasonable to prevent senior civil servants and Ministers from pursuing their careers freely. They are individuals with ambitions, interests, and families to support. As one former senior civil servant explained,

"My motivations [for taking the job in business] were the normal mixture of job interest, challenge, increase in power, money, and fun. There was never a feeling that I could cash in on my previous experience, but there was a feeling that I could build on it. I certainly acknowledge that I can use my experience and contacts."⁴⁴

When private-sector employers impose restrictive covenants on their employees' future employment, they must be 'reasonable' in scope. Where they are tested in court, judges often fail to uphold them. While public service does and should impose stricter constraints on employees, it is nonetheless important that the need for 'reasonableness' is respected.

Some civil servants work in areas of great sensitivity, where the risks of prior skills being exploited by business are serious. The private sector faces similar problems, and often seeks to restrain future employment through 'non-compete' clauses. One former permanent secretary noted that:

"If I was in the private sector and they imposed such restrictions on future employment, they would pay me gardening leave."⁴⁵

This question of whether public officials should be compensated for constraints imposed on their future careers might be an important topic for inclusion in a public consultation on the revolving door.

Attracting skilled individuals

It is more common nowadays for individuals to reach the highest levels of the civil service well before retirement age, making it more likely that they will regard a private sector job as the natural next step in their career. If civil servants and Ministers were prohibited from holding private sector jobs after their public employment, it might become more difficult to attract highly skilled individuals to government. Ministers can find themselves effectively made redundant overnight if a mistake is made by their department or they find themselves embroiled in a scandal, not necessarily of their own making. MPs more broadly face the threat of losing their job at every election – a risk that varies considerably depending on whether a seat is marginal or safe. This lack of job security is a considerable source of uncertainty, for which some allowances should be made when seeking to constrain future employment opportunities.

Such arguments become more salient given that the current period of austerity is likely to bring major cuts in public sector employment. Redundancy payments are also likely to be capped⁴⁶. In these circumstances, imposing restrictions on the future employment of senior civil servants and Ministers might well be unreasonable. On the other hand, the attitude sometimes found among senior civil servants and Ministers, that they are owed a lucrative private-sector job in return for having devoted themselves to public service for many years, seems just as unreasonable.

44. Interview with former senior civil servant who took a job in industry.

45. Interview for this project.

46. On 6 July 2010, Cabinet Office Minister Francis Maude announced that he will introduce legislation as soon as possible to cap the amount of redundancy payments made to civil servants at 12 months' pay for compulsory redundancy and 15 months' pay for voluntary exits.

THREE REGULATING THE REVOLVING DOOR

THE UK APPROACH

In the UK, rules about the revolving door are restricted to Ministers and civil servants. MPs face no restrictions on their future employment and are not required to seek advice about business appointments.

The system for scrutinising business appointments provides for case-by-case consideration of proposed appointments. The relevant rules are embedded in professional codes of conduct for civil servants and Ministers. Advice on how those rules relate to individual cases is provided by an independent non-statutory body, the Advisory Committee on Business Appointments, ACOBA. ACOBA makes recommendations to the Prime Minister, who makes the final judgement about whether an appointment would violate the relevant code.

Advisory Committee on Business Appointments

ACOBA is a committee of seven members appointed by the Prime Minister, supported by a small secretariat. It requires individuals under its remit to seek advice prior to accepting an appointment. Committee members include representatives of all three main political parties, plus one senior civil servant, one diplomat, one military officer and a senior representative of the business community.

The Committee provides advice about whether an appointment should be taken up, and may impose conditions on the nature of employment. An 'appointment' is defined as any paid employment. This means that consultancy work and paid speeches are included – not merely directorships and seats on the board of companies.

ACOBA considers cases on an individual basis, paying attention to past decisions so as to ensure consistency but also undertaking its own research. The Committee considers, for example, factors such as whether an individual applied for the job that has been offered and so went through a formal application procedure, or was directly approached by the company. The rules and procedures differ slightly for civil servants and Ministers, as detailed below.

Civil servants and ACOBA

The Business Appointment Rules for Civil Servants are part of the Civil Service Management Code and are binding upon members of the civil service as part of their employment contracts⁴⁷. Similar rules apply to other crown servants, such as diplomats and employees of the intelligence agencies. The Rules cover every civil servant, at all grades, and require consideration of whether an application under the Rules is necessary before accepting any new appointment or employment. However, cases involving individuals who are ranked below the senior civil service are typically dealt with by the relevant Departments rather than being referred to ACOBA. Only the applications of the most senior members of the civil service are seen by ACOBA.

47. These Rules apply to Civil Servants who leave the Civil Service after 2 February 2011. They replace the Rules on the Acceptance of Outside Appointments by Crown Servants. The Civil Service Management Code is available here: <http://www.civilservice.gov.uk/about/resources/csmc/index.aspx>

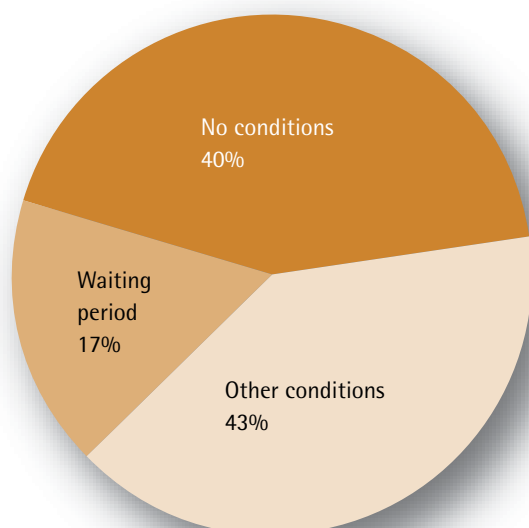
Individuals in the senior civil service (SCS) who consider taking up an outside appointment are required to fill out an application form specifying any previous connection with the company through their work⁴⁸. This information is checked by the counter-signing officer in the relevant department, and passed on to the ACOBA secretariat which makes a recommendation on the basis of its own research and with the aim of ensuring consistency with previous decisions.

For the lowest grade of senior civil servant (SCS1), the ACOBA secretariat provides its recommendation directly to the human resources section in the individual's department, which makes the final decision on whether the appointment is acceptable. For SCS2 employees (the level of a director), the process is similar, but ACOBA also seeks a position from the head of the civil service. For SCS3 individuals (director generals and permanent secretaries), the department first forms a view on the appointment, which it then passes on to ACOBA. The ACOBA secretariat provides advice to the ACOBA Committee, which then provides advice to the Prime Minister, who makes the final decision.

The Committee can conclude that it has no objection to the appointment and does not attach any conditions to its acceptance, or that the appointment is entirely unsuitable. Permanent Secretaries and Second Permanent Secretaries are subject to a minimum waiting period of three months before taking up a new appointment, although the Advisory Committee may advise that this waiting period should be waived. The Committee can also recommend that further conditions be imposed on employment for up to two years after leaving office. These conditions might be, for example, an additional waiting period before accepting the post; or a prohibition of work on specific projects which might be relevant to their former work.

In addition, the new Business Appointment Rules for Civil Servants, applicable since 2 February 2011, include a two-year ban on civil servants at SCS3 level and above lobbying government on behalf of their employer⁴⁹. The period of the ban may be reduced by the Advisory Committee if they consider this to be justified by the particular circumstances of an individual application.

Applications approved, 2006–09



48. The application form is now available on the ACOBA website, at http://acoba.independent.gov.uk/rules_and_guidance_civil_servants.aspx. An application is required for each new appointment that the individual wishes to take up during the two-year period after leaving their post.

49. From May 2010, Ministers have been prohibited from engaging in lobbying activity for two years after leaving office according to section 7.25 of the Ministerial Code. ACOBA defines lobbying as "engaging in communication with Government (Ministers and officials including Special Advisers) with a view to influencing Government policy in relation to their own interests or the interests of the organisation in which they are employed", according to ACOBA Secretary Sue Pither.

ACOBA's record

The chart shows that between 2006 and 2009, ACOBA approved 86 cases (40 per cent) of the total 216 applications from senior crown servants without conditions. It recommended that 36 (17 per cent) should be subject to a waiting period, and that the remaining 94 (43 per cent) be approved subject to other conditions, eg the specific activities in which the individual would engage in the new post.

Conditions are imposed more frequently where more senior officials are involved, than for the civil service as a whole. While the chart shows ACOBA approved only 40 per cent of applications without conditions or waiting period, the figure for the civil service as a whole was 66 per cent⁵⁰.

In some cases, the waiting period imposed or the conditions recommended may be sufficiently strict to cause the individual to refrain from taking up the appointment or the company to withdraw its offer. These cases do not appear in the ACOBA data, so it is difficult to establish how frequently this occurs. Individuals might receive a letter, for example, in which the Committee says that it is "minded to" recommend that the Prime Minister recommend that the individual waits a full two years before taking up the appointment. This effectively amounts to the rejection of an application. But since it is likely to prompt the individual to withdraw the application, it will not appear in ACOBA's reports.

Once the Committee has made a decision, the ACOBA secretariat communicates this to the relevant department. If the department or individual is not satisfied with the decision, the individual will be invited to meet the Committee. Once agreement is reached on the advice among the Committee, individual and department, ACOBA writes to the Prime Minister with a final judgement. If the individual takes up the proposed appointment, this information is published on the ACOBA website.

Crown servants have not been compelled to accept ACOBA's advice, but in practice individuals rarely disregard it. The process is highly consensus-based, in line with the overall approach of self-regulation.

ACOBA's capacity to impose conditions could arguably be used with greater precision. ACOBA could consult the individual applicant, the department and the future employer with a view to drawing up detailed constraints on the individual's working practices in the new role so as to reduce potential conflicts of interest. These constraints could then be reduced and eliminated over time.

Ministers and ACOBA

A different set of rules applies to the employment of former Ministers, and the procedure for gaining advice from ACOBA is also slightly different. Instead of rules, Ministers have guidelines – the Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown – which were introduced on the recommendation of the Committee on Standards in Public Life. The 2007 Ministerial Code required former Ministers to seek advice on outside appointments from ACOBA, whereas previously this was only recommended, and it *expected* them to abide by the advice given. This has been further strengthened in the new Ministerial Code introduced in May 2010, which also prohibits Ministers from lobbying government for two years after leaving office. Paragraph 7.25 reads:

50. This was calculated from information provided in the ACOBA annual reports. See Advisory Committee on Business Appointments, *Ninth Report 2006–2008* and Advisory Committee on Business Appointments, *Tenth Report 2008–2009*

"On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must [*italics added*] abide by the advice of the Committee."⁵¹

Former Ministers are required to seek advice from ACOBA each and every time they wish to take up a paid appointment during the two years after leaving office. Although no criminal sanctions attach to a breach of the code, and the Cabinet Office is not entrusted with its enforcement, the Prime Minister may refer any allegations of a violation to be further investigated by an independent adviser.

One key difference in the ACOBA process for Ministers, compared to that for civil servants, is that the relevant department does not play a significant role. ACOBA communicates its advice directly to the (former or current) Minister. If the Minister is not content with the advice, he or she can arrange a meeting with the committee. It is not clear why advice is provided directly to Ministers, apparently denying the department a role in the process. It would seem important to introduce some kind of third-party check on the process for Ministers, and the department is likely to be best placed to judge whether a Minister will face relevant conflicts of interest.

The Guidelines indicate a three-pronged test by which ACOBA can evaluate each proposed appointment:

- To what extent has the former Minister been in a position which could lay him open to the suggestion that the appointment was a reward for past favours?
- Did the former Minister have access to trade secrets of competitors or unannounced governmental policy which could give his new employer an unfair advantage?
- Is there any other reason why the acceptance of an appointment by the Minister would give rise to public concern which would either justify advising the appointment is unsuitable or should be subject to delay or another condition?

The answers to these questions are to be balanced against the desirability of the Minister taking employment in the private sector. If the answers reveal doubts or concerns, then conditions can be imposed to help assuage those concerns.

Even where ACOBA does impose conditions, it lacks the power to monitor whether those decisions are respected, or to impose sanctions on individuals who disregard their advice.

51. *Ministerial Code*, May 2010.

CASE STUDY: STEPHEN LADYMAN

Stephen Ladyman was a junior Minister at the Department for Health from June 2003 until May 2005, and was then appointed Minister of State for Transport after the 2005 election, a post which he held until June 2007. In January 2008, he was appointed adviser to ITIS Holdings, a company providing information on travel and traffic, which had held a governmental contract during Ladyman's time in office at the Department for Transport. This contract was extended during Ladyman's term in office although ITIS Holdings denies that Ladyman had any influence over that decision⁵².

Using the Freedom of Information Act, the Sunday Times was able to verify that Ladyman corresponded with both Transport for London (TfL) and the Highways Agency on ITIS Holdings' behalf once employed by the company. In May 2008, he wrote to Derek Turner, director of traffic operations at the Highways Agency, stating that although he was not allowed to lobby the government or its agencies until June 2008, he recommended that the agency do business with ITIS Holdings and said that he would "really like to bring some of my ITIS colleagues along to chat" with the Highways Agency⁵³. In July 2008, he sent a letter to Peter Hendy, commissioner at TfL, asking to establish a business relationship on transport projects. In the letter, he explicitly referred to his previous role as Minister using the words "You may remember me from my time as Minister of state for transport." Ladyman, who remained an MP, also used his House of Commons address for business correspondence.

He later admitted that:

"I use the fact that I might have met them previously when I was a Minister as a way of introducing myself. It's a slightly warmer process than cold calling."

Ladyman had applied to ACOBA for advice on his new appointment and was told that he could not lobby the government for 12 months after leaving office⁵⁴.

This lack of monitoring capacity is arguably the greatest weakness of the current system for scrutinising post-public employment. It means that it falls to the media or NGOs to provide scrutiny, on an ad hoc basis, of how former Ministers and civil servants behave once they have left office. Yet the media is not always interested in portraying the complexities of these cases, with some media tending to sensationalise the risks and ignore any potential benefits.

One former permanent secretary thought that:

*"The system operates at the individual's expense. It's not about [identifying/preventing] rewards for influence, it's about avoiding embarrassment."*⁵⁵

Appearances are important. As discussed earlier, public trust depends not just on public servants acting with integrity, but also on their being seen to do so.

52. Sunday Times, Labour MP Stephen Ladyman uses inside track to strike deals, 23 November 2008, <http://www.timesonline.co.uk/tol/news/politics/article5213619.ece>

53. Ibid.

54. ACOBA 9th Report 2006-8.

55. Interview for this project.

Improving ACOBA

One way to give ACOBA more teeth and to grant it the resources necessary for making careful decisions tailored to individual circumstances would be to make it a statutory body⁵⁶. This would represent a major departure from reliance on self-regulation, which has long been a fundamental tenet of British public service. However, in the legislative branch, which has also traditionally relied upon self-regulation, this principle is now being reconsidered in the wake of the expenses scandal. It is also a good opportunity to reconsider how self-regulation functions with regard to the executive branch⁵⁷. If the government is serious about re-building public trust in governance institutions, it may need to shift away from self-regulation and focus on establishing channels for independent scrutiny.

ACOPA has taken some important steps to build confidence in its operations in recent years. A full contingent of new members has been appointed to the ACOBA committee, replacing former members who had sat on the committee for many years and exceeded their terms. The organisation has also adopted a stricter approach to its own internal systems. That includes adopting a code of practice for members of the committee and requiring members to register their interests. ACOBA is also increasingly active in communicating to individuals within its remit at different stages of their careers and in raising awareness of the Ministerial Code and Guidelines.

However, the appointment of the new chair of ACOBA was itself controversial. Lord Lang of Monkton is himself a former Minister, having served as Secretary of State for Scotland between 1990 and 1995 and, at the time of his appointment, held a number of company directorships. The Public Administration Select Committee questioned Lord Lang and found him competent for the job, but added that it had "serious concerns about the appointment of a former Cabinet Minister with business appointments of his own to a role that needs the perception of independence if it is to attract public confidence". Lord Lang was also one of the individuals targeted by the spoof PR company created for the Dispatches documentary⁵⁸.

Other steps to reduce the risks of the revolving door have been taken outside ACOBA. The new Ministerial Code published in May 2010 tightens restrictions for former Ministers⁵⁹, a new Code of conduct for Special Advisers now applies, and new Rules for civil servants came into effect in February 2011. There is some discussion about extending the period after leaving office during which Ministers and senior civil servants are required to seek advice. TI-UK welcomes these developments but believes there is a need for stronger, comprehensive reforms (see Conclusions and Recommendations).

OTHER REGULATORY APPROACHES

The revolving door exists everywhere and it is significant that the OECD is taking an interest in it, particularly in the aftermath of the global financial crisis. The phenomenon is known by a variety of terms in different countries – for example, *pantouflage* or 'cocooning' in France; *amakudari* or 'parachuting from heaven' in Japan. Movement from public service into business is not always seen as posing a risk to integrity. In Japan, the practice is often used to facilitate the career progression of individual civil servants who fail to pass the highly competitive examination that allows promotion at least to the role of division chief of a ministry⁶⁰. The Japanese government can control and facilitate this process by offering such individuals jobs in state-owned enterprises. A similar trend is seen in some European countries.

56. The ACOBA committee is currently supported by a secretariat comprising four people based in the Cabinet Office. Its costs amounted to £191,500 in 2009-10, according to ACOBA's Eleventh Report, 2009-10.

57. For a discussion of the principle of self-regulation with regard to the legislative branch, see Nicholls, Vanessa *Firm Foundations for a New Politics: The Governance of the House of Commons after the MPs' expenses crisis*, The Institute of Government, 2010.

58. <http://www.independent.co.uk/news/uk/politics/pms-watchdog-dragged-into-politicians-jobs-row-1928741.html>

59. Ministerial Code, Cabinet Office, May 2010.

60. Mr Yoichi Ishii, Chair of TI-Japan, provided very helpful guidance and insights on *amakudari* in Japan.

Laws and contracts...

However, regulation of post-public employment varies considerably. Some countries have primary legislation prohibiting and restricting forms of post-public employment, usually as part of a general law on the civil service. To this end, Belgium and France have the General Statute of Officials, Austria and Germany have Acts on Federal Civil Servants, and Japan has a National Public Service Act. Some countries have separate laws on specific groups of public officials, such as Austria's Act on Judges or Germany's Act on the Legal Status of Soldiers.

Other countries have specific laws on integrity that include provisions on post-public employment. Turkey's Law No. 2531 on Prohibitions of Post-Public Employment is tailored for this purpose, as is Poland's Limitation on Conducting Business Activity by Persons Performing Public Functions Act (1997). Spain has an Act on Conflict of Interest (1996), as does Canada (2006). Primary legislation is arguably the most effective deterrent to post-public employment conflict of interest. However, it might have the unintended consequence of deterring individuals from seeking public office, wary of the constraints that this would impose on their future careers.

Another form of regulation is secondary legislation, in the form of directives, regulations, rules and decrees. These are often authorised by and related to pieces of primary legislation. For instance, in Japan, the National Public Service Act is supplemented by the rules of the National Personnel Authority. Secondary legislation may make it easier to enforce primary legislation, and can also be more easily adapted in response to changes that arise.

Other legal instruments include collective agreements and employment contracts. The inclusion of a clause on post-public employment restrictions in employment contracts is increasingly common, and can have the advantage of allowing solutions tailored to particular sectors or even jobs. A signed contract provides a solid basis for enforcing the prohibitions defined in its clauses. New Zealand and Norway have in recent years started to include post-public employment clauses in the employment contracts of public officials.

...and codes of conduct

An alternative to these legislative restrictions is the 'soft-law' alternative of codes of conduct. Many countries – including Ireland, Slovakia and Turkey – embed post-public employment provisions in codes of conduct for civil servants. Sometimes politicians are covered too, either in the same document or in separate codes. Codes of conduct are thought to have a weaker deterrent effect than legislation, and are virtually meaningless in regulating the activities of former officials once they have left office. However, codes can be critical to fostering the integrity and pride in serving the public interest necessary to prevent conflicts of interest emerging in the first place. Moreover, codes do not have to replace legislation, they can complement it. In Canada, rules on post-public employment and on conflict of interest are set out both in law and in employee codes of conduct.

There is little evidence on which approach is most effective – something that is likely to depend somewhat on the judicial tradition of particular countries and the organisational cultures of their public services. France relies heavily on hard law and sanctions contained in legislation to regulate the *pantouflage* system. The UK is at the other end of the spectrum, relying heavily on codes of conduct and trusting public officials largely to regulate themselves, subject to the advice of an independent body. Germany has opted for a mix of the two methods, traditionally relying on legislation, but since 1998 also adopting a detailed code of conduct to inform employees how to handle ethical issues and potential conflicts of interest.

Countries also take different approaches to the kind of public office roles that are regulated. It is common to focus on those exercising executive or decision-making power, with less emphasis on the role of legislators. However, more and more countries are introducing rules for politicians too.

Common instruments

While the status of rules on the Revolving door varies considerably from country to country, the set of instruments used for regulation is fairly consistent:

Cooling-off periods are time-limited restrictions on the ability of former public officials to accept employment in the private sector. The rationale is that the capacity to exercise undue influence or use information learned while in office decays over time. Therefore, requiring individuals to wait before taking up a private-sector role is seen to reduce the risk of any conflict of interest emerging. The time period varies between countries, from six months for politicians in Norway, to two years in Japan and the Netherlands. Some countries operate time periods of different lengths for officials at different levels of seniority. This differentiated approach seems sensible, since the durability and value of contacts is also likely to vary in different sectors, roles, and according to personal circumstances. Germany operates different time limits for civil servants if they have reached retirement age.

Cooling-off periods can also be **related to specific jobs or activities** that can be performed in post-public employment. Most typically, former public officials are prohibited from engaging in lobbying. The new UK government has announced that Ministers will in future be banned from engaging in lobbying activities for two years after leaving office. Canada, meanwhile, prohibits post-public employment lobbying for certain public office holders for a full five years after leaving public office. Often, public officials who had a role in procurement are prohibited from taking any role where that specific knowledge might benefit a company. Australia recently introduced guidelines specifically for employees managing outsourcing and undertaking market testing⁶¹, while the United States has specific post-public employment prohibitions for officials involved in procurement and contract management.

Restrictions can also be targeted to take account of the kind of work the individual performed while in office – for example, former officials can be banned from working on particular projects. The Departmental Ethics Office in the United States has established three levels of restrictions on post-public employment: former public officials are prohibited from representing anyone before the government on a matter with which he or she dealt while in office – for one year, two years or their whole lifetime, depending on individual position and circumstances.

Restrictions relating to pre-public employment are also becoming more common, although this has traditionally been less frequently subject to regulation. In January 2009, immediately upon taking office, President Barack Obama introduced restrictions relating to 'pre-employment' in business: all appointees entering government are banned for two years from the date of appointment from participating in any matter directly related to their former employer or former clients⁶².

61. APS Circular No. 2007/3 on Post Separation Employment: Policy Guidelines, www.apsc.gov.au/circulars/circular073.htm.

62. See http://www.whitehouse.gov/the_press_office/Ethics-Commitments-By-Executive-Branch-Personnel/

Some countries have ***dedicated agencies to offer advice***, which public employees may be required or advised to consult. Given the difficulty of navigating some of the possible ethical dilemmas that the revolving door presents, advice is a critical part of any regulatory framework. One interesting initiative is a special website developed by the City of New York's Conflicts of Interest Board. The website offers a frequently-asked questions page which raises awareness of post-public employment problems and clarifies expected standards of conduct. Like the UK, Ireland has an advisory board from which public officials considering a particular job offer in the private sector are required to seek advice. The European Commission, meanwhile, has established an ad hoc Ethical Committee to analyse whether proposed appointments taken within one year of ceasing to hold office are in accordance with the Commissioners' Code of conduct. However, as with ACOBA in the UK, there is no sanction for ignoring the advice of Ireland's Outside Appointments Board or the opinion of the Commission's Ethical Committee.

Disclosure and monitoring are important parts of any revolving door regulation. Details of the jobs taken by former public officials are disclosed in many countries, including the UK, where this information – at least regarding senior crown servants – is routinely made available by ACOBA. However, the reasons for taking certain decisions are not disclosed in the UK, making scrutiny difficult and therefore making ACOBA vulnerable to criticisms of inconsistency. Monitoring whether advice is followed or prohibitions respected is also often a weak point of regulation. Disclosure can compensate for such a weakness and help the media and third sector to play an active scrutiny role. Research on systems for regulating the disclosure of MPs' interests around the world suggests that disclosure is most effective in reducing perceived corruption when disclosures are made available to the public⁶³. This suggests that either actual scrutiny by the media and the public – or the threat of that scrutiny – is most effective in constraining behaviour.

63. Djankov et al, 'Disclosure by Politicians', Working Paper 14703, National Bureau of Economic Research, New York. The paper analyses data from 175 countries.

CONCLUSIONS AND RECOMMENDATIONS

OVERALL CONCLUSION

Some of the cases highlighted in this report raise serious questions about the efficacy of the current UK system for regulating movements through the revolving door between the public and private sectors. The system suffers from weaknesses in several critical areas and the right balance has not yet been achieved between reaping the benefits of such movements, and regulating the risks. Reforms are long overdue.

RECOMMENDATIONS

The weaknesses identified in this report and the recommendations for reform that follow from them are listed below.

CONCLUSION: **The revolving door is of great public concern.**

RECOMMENDATION 1: A full public consultation on regulation of the revolving door should be conducted in 2011/12.

CONCLUSION: **ACOPA is only an advisory body.**

RECOMMENDATION 2: ACOPA should be replaced with a new statutory body with sufficient resources and powers to regulate the post-public employment of former Ministers and crown servants. The rulings of this new body should be mandatory.

CONCLUSION: **The current composition of ACOPA leaves it open to criticism that it is not representative of UK society. This is highly unfortunate for an institution charged with a scrutiny role.**

RECOMMENDATION 3: The composition of a new statutory body should be more representative of UK society – for example, by including representatives of civil society. The new body should be more independent of the decision-makers it scrutinises.

CONCLUSION: **A case-by-case approach for scrutinising post-public employment is appropriate, since the risks vary considerably depending on the nature of an individual's public role and the content of the proposed private sector role.**

RECOMMENDATION 4: The new regulatory body should begin its work by carrying out a thorough audit of all positions under its remit, to assess potential risk areas. New rules could then be drafted to reflect the severity of risk associated with particular roles.

RECOMMENDATION 5: The period during which former Ministers and crown servants must undergo scrutiny for appointments, should be extended from two years to three. In other cases, there should be a two-year ban on employment in the associated industry. In the case of individuals who have had responsibility for procurement decisions, the ban on lobbying should be extended to three years. For high-risk government departments (eg defence), and in exceptional situations, it may be necessary to impose lifelong restrictions on employment in the associated industry. The implications of this policy for the ease of recruiting individuals to these departments should be fully assessed.

CONCLUSION: Currently, there is no obligation to consult departments for appointments of former Ministers. Moreover, it is not clear that departments engage with ACOPA in a consistent manner. Departments are arguably in the best position to understand potential conflicts that might arise, since they have the most detailed knowledge of what the individual has worked on and what information he/she has been able to access.

RECOMMENDATION 6: It should be mandatory for the new regulatory body to consult departments for advice on the risks associated with particular appointments.

RECOMMENDATION 7: In addition to these special high-risk cases, the new regulatory body should, in general, pay more attention to the details of particular cases. It could, for example, work with all parties in a case – former government employees, departments and future employers – to establish detailed constraints on working practices in the new role, which would be reduced over time.

CONCLUSION: ACOPA currently lacks the resources to maximise the benefits of a case-by-case approach. The new body will therefore need adequate resources to carry out its role.

RECOMMENDATION 8: The new body should be partly financed by companies that employ former Ministers or crown servants (within the appropriate period since leaving office) paying a fee towards the cost of the scrutiny process.

CONCLUSION: The revolving door becomes particularly problematic when there is a possibility that former Ministers, civil servants and MPs engage in lobbying. In this context, TI-UK welcomes the government's May 2010 decision to ban former Ministers from engaging in lobbying for two years after leaving office and the similar provision for civil servants of level SCS3 or above in the new Rules.

However, ultimately this issue is best addressed through tighter regulation of lobbying in general, not just lobbying in the context of post-public employment.

RECOMMENDATION 9: A register of lobbyists should be set up as soon as possible together with the introduction of legislation on lobbying to ensure that disreputable companies cannot evade regulation.

CONCLUSION: Although arguments can be made that the future employment of elected MPs should not be regulated, some MPs do have considerable access to power – those who have previously served as Ministers, and chaired select committees, for example.

RECOMMENDATION 10: The Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs, taking into account differences in the incidence of conflict-of-interest risk between various roles, and being sensitive to the job insecurity that elected MPs face. Consideration of this issue should be linked to an examination of the remuneration of MPs.

CONCLUSION: Some local government employees and councillors may also face potential conflicts of interest when they take up post-public employment.

RECOMMENDATION 11: The regulation of the post-public employment of former local government employees and councillors should be the subject of a study with a view to inclusion in the new body's remit.

CONCLUSION: Unpaid appointments to non-commercial organisations – for example, charities and NGOs – are not regulated by the current system. This suggests that it is the furtherance of private interests that is the main concern of regulators. However, it seems an anomaly that the appointment of, say, a former environment Minister, to an unpaid role at a major environmental advocacy NGO, would go unregulated, given that risks relating to undue influence and use of information gathered while in public office are present. These concerns would be partially addressed by adequate regulation of lobbying.

RECOMMENDATION 12: The remit of regulation should be extended to include appointments to non-commercial entities.

CONCLUSION: ACOBA's inability to monitor compliance reduces public confidence in the system.

RECOMMENDATION 13: The new body should monitor compliance with its decisions and individuals should be required to certify on an annual basis that they are complying with any restrictions imposed by the new body. Their employers should do the same. These declarations would be filed with the regulatory body, and made available to the public. In cases of non-compliance, sanctions should be imposed on both individuals and their employers.

CONCLUSION: ACOBA is not currently bound to publish reasons for its advice and the data that it does publish are inadequate to allow public or media scrutiny, not least because it does not publish information on applications that have been withdrawn. This lack of transparency raises doubts about the criteria ACOBA uses to make its decisions and arguably adds to uncertainty for the individuals going through the process.

CONCLUSION: Full transparency about the regulatory body's decision-making would increase confidence that the business appointments process is sufficiently robust to minimise the risk of impropriety. Improved data would also help to establish whether there are any relevant patterns in the types of applications that are made or that ultimately fail, and might benefit crown servants and Ministers too.

RECOMMENDATION 14: The new body should disclose full information about the procedures for assessing applications and the reasons for its judgements.

RECOMMENDATION 15: The Office of National Statistics should collect and publish information on the destinations of leavers from the Senior Civil Service.

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